

*United States Court of Appeals*  
*for the*  
*District of Columbia Circuit*



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

---

---

Court of Appeals, District of Columbia

JANUARY TERM, 1908.

No. 1853. **532**

---

CHARLES F. JOY, APPELLANT,

vs.

JOSEPH WILSON FROST.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

---

---

FILED JANUARY 11, 1908.

# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1908.

No. 1853.

CHARLES F. JOY, APPELLANT,

vs.

JOSEPH WILSON FROST.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

## INDEX.

Original. Print.

Caption.....	a	1
Declaration .....	1	1
Notice to plead.....	4	3
Affidavit of Charles F. Joy.....	5	3
Demurrer.....	8	5
Order overruling demurrer.....	9	6
Motion to re-argue demurrer.....	10	6
Order allowing motion to re-argue ; vacating order overruling de- murrer ; sustaining demurrer, with leave to amend.....	11	7
Amended declaration.....	12	7
Notice to plead.....	16	9
Demurrer to amended declaration.....	17	9
Order sustaining demurrer, with leave to amend.....	18	10
Judgment.....	18	10
Appeal .....	18	10
Directions to clerk for preparation of transcript of record.....	19	10
Memorandum : Appeal bond filed.....	19	11
Clerk's certificate.....	20	11

# In the Court of Appeals of the District of Columbia.

---

No. 1853.

CHARLES F. JOY, Appellant,  
*v.s.*  
JOSEPH WILSON FROST.

---

a Supreme Court of the District of Columbia.

At Law. No. 48511.

CHARLES F. JOY, Plaintiff,  
*v.s.*  
JOSEPH WILSON FROST, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:—

1 *Declaration.*

Filed May 3, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48511.

CHARLES F. JOY, Plaintiff,  
*v.*  
JOSEPH WILSON FROST, Defendant.

The plaintiff, Charles F. Joy, sues the defendant, Joseph Wilson Frost for one thousand (1000) dollars, which the defendant owes the plaintiff and unjustly detains from him; for that by a certain act of Congress approved March 3, 1903, the sum of twenty-five thousand (25,000) dollars was appropriated to enable the Secretary of the Interior to install an electrical fire alarm apparatus in the buildings of the Government Hospital for the Insane situated in the District of Columbia, and the defendant, who was financially in-

terested in and a part owner of certain patented electrical apparatus and devices suitable for the purposes provided in said act of Congress was desirous of having his said apparatus and devices adopted by the Secretary of the Interior for installation in the said buildings of the said Government Hospital for the Insane, and on, to wit, the 15th day of April, 1903, applied to the plaintiff, who was at that time engaged in the practice of law in the District of Columbia, for his services as such attorney and employed him to urge the Secretary of the Interior to create and appoint a Board of Electrical Experts

vested with the power and charged with the duty to select

2 the particular form or type of apparatus or device which should be installed in said buildings under the provisions of the said act of Congress, and to make an order requiring the owners and representatives of any and all electrical fire alarm apparatus or devices who might seek to have their respective apparatus or devices installed in said buildings under the provisions of said act of Congress to submit their respective apparatus or devices to said "Board of Electrical Experts," which Board should pass upon the respective merits thereof and select the best and most suitable one for installation in said buildings, and the defendant, on to wit the said 15th day of April, 1903, contracted and agreed with the plaintiff in consideration of said services to be rendered by the plaintiff to pay to him the sum of one thousand (1000) dollars if the Secretary of the Interior should create and appoint a Board of electrical experts as aforesaid, and if the said apparatus or devices in which the defendant was interested and was a part owner should be selected by the said Board for installation in said buildings under said act of Congress; that the plaintiff, under his said employment, was not required or expected to represent the defendant before said Board of electrical experts in any manner nor to any extent; that, in pursuance of said employment, the plaintiff did present fully to the Secretary of the Interior on several different occasions the matter of the creation and appointment of said Board of electrical experts with the powers aforesaid, and the making of said order requiring the submission of all said apparatus and devices thereto, and the

Secretary of the Interior did, on to wit, the first day of May, 3 1903, create and appoint said Board of electrical experts and

made said order requiring the submission of all apparatus and devices to the said Board for the purposes aforesaid, and the apparatus and devices in which the said defendant was interested and was a part-owner, together with many other kinds of apparatus and devices, was submitted to said Board, which Board did, on to wit, the first day of June, 1903, select, accept and adopt for installation in said buildings under the said act of Congress the devices and apparatus in which the said defendant was interested and was part owner, but the said plaintiff never appeared before said Board, never made any representations to the said Board or any of the members thereof, and never sought in any manner to influence the action of the said Board or any of its members; and thereafter, on to wit, the 15th day of June, 1903, the Secretary of the Interior entered into a contract with the defendant or him and his associates, for the in-

stallation of the said apparatus or devices in which the said defendant was interested and part owner, in the said buildings for a consideration in the sum of twenty-five thousand (25,000) dollars to be paid for the said installation and for the apparatus installed; and although often requested so to do, the defendant has hitherto refused and still refuses to pay to the plaintiff the said sum of one thousand dollars, (\$1,000) or any part thereof.

Wherefore plaintiff brings this suit and claims one thousand dollars (\$1,000) with interest from the first day of June, 1903, besides costs.

4

## II.

The plaintiff, Charles F. Joy, sues the defendant, Joseph Wilson Frost for other money payable to the plaintiff by the defendant, for goods sold and delivered by the plaintiff to the defendant; for work done and materials provided and services rendered by the plaintiff for the defendant at his request; and for money loaned by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at his request and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them. And the plaintiff claims the sum of one thousand dollars (\$1,000) with interest from the first day of June, 1903, besides costs.

E. F. COLLADAY,  
HARRY F. LERCH,  
*Attorneys for Plaintiff.*

*Notice to Plead.*

The defendant is to plead hereto on or before the 20th day exclusive of Sundays and legal holidays occurring after the date of service hereof, otherwise judgment.

E. F. COLLADAY,  
HARRY F. LERCH,  
*Attorneys for Plaintiff.*

5

*Affidavit.*

Filed May 3, 1906.

In the Supreme Court of the District of Columbia.

DISTRICT OF COLUMBIA, ss:

I, Charles F. Joy, being first duly sworn, on oath depose and say: that I am the person named as the plaintiff in the declaration to which this affidavit is attached, which declaration is made a part hereof; that I have a good cause of action against Joseph Wilson Frost, the person named as defendant in said declaration, which said cause of action is as follows, to wit: that on the 3d day of

March, 1903, a certain act of Congress was approved by the President of the United States whereby the sum of twenty-five thousand dollars was appropriated to enable the Secretary of the Interior to install an electrical fire alarm apparatus or system in the buildings of the Government hospital for the Insane, situated in the District of Columbia, commonly known as Saint Elizabeth's Insane Asylum; that the defendant Joseph Wilson Frost was, at that time financially interested in certain patented electrical fire alarm apparatus and devices which were suitable for installation in the said Hospital for the Insane and he desired to secure the contract for the installation of the said apparatus or devices in which he was interested; that plaintiff was, at that time engaged in the practice of law in the District of Columbia and the defendant called upon him and stated that if he could have the matter of the selection of the apparatus or devices committed to a board of electrical experts, he felt

6 confident that he, the said defendant, could convince such a

Board that his apparatus and devices were the best on the market, and that he could thereby, in fair competition secure the contract, but he did not feel that he was qualified to present the matter properly to the Secretary of the Interior, and he therefore wished to employ this plaintiff as his attorney to do so; that on or about the 15th day of April, 1903, in a personal interview between the defendant and the plaintiff, the defendant agreed with the plaintiff that if the plaintiff would present the matter to the Secretary of the Interior and convince him that such a board of electrical experts should be appointed and the matter of the selection of the apparatus or devices committed to that board, and if such board should be appointed with such powers, and in competition, before that board, the apparatus or devices in which the defendant was interested were chosen and the contract awarded to the defendant or to the defendant and his associates, that the defendant Frost would pay to the plaintiff a fee in the sum of \$1,000, all of which was fully set forth in a letter written by the said defendant Frost on or about the 15th day of April, 1903, and delivered to this plaintiff, and the plaintiff says that, acting under said employment, he presented to the Secretary of the Interior the said proposition for the appointment of a board of electrical experts which should be vested with full power to select the best apparatus or device on the market, all devices to be submitted in fair competition, and he convinced the Secretary of the Interior that such a course was the best course which

7 could be adopted, and the Secretary of the Interior did appoint such a board and committed to them full authority to make the selection of the apparatus or device. Affiant is informed and believes and therefore states that after the appointment of the said board, the defendant Frost and many other inventors presented their respective devices to the said board with the result, as the said defendant has frequently informed this plaintiff, that the board determined that the apparatus or device in which the defendant was interested was the best on the market and the board selected it for installation in the said buildings, and subsequently the Secretary of the Interior entered into a contract with the said defendant

or his associates for the installation of his said apparatus or device in the said building for the consideration of \$25,000. Affiant says that he was not required under his agreement with the said defendant to make any representations whatever to the said board nor to do anything designed in any way to influence their action, and he says emphatically that he never knew nor spoke to any member of the said board either during the session thereof or at any other time and never did, nor contemplated the doing of anything for the purpose of affecting in any manner the judgment or action of the said Board. But, notwithstanding his said promise, the defendant has not, nor has any one for him, paid the said sum of \$1,000 or any part thereof, and there is now justly due and owing to the plaintiff from the defendant, the sum of \$1,000, with interest from the first day of June, 1903, exclusive of all set offs and just grounds of defense.

CHAS. F. JOY.

Subscribed and sworn to before me this 3d day of May, A. D. 1906.

[SEAL.]

ROB'T E. P. KREITER,  
*Notary Public in and for the  
District of Columbia.*

8

*Demurrer to Declaration.*

Filed June 6, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48511.

CHARLES F. JOY  
*vs.*  
JOSEPH WILSON FROST.

The defendant says that the declaration is bad in substance.

COLE & DONALDSON,  
*Attorneys for Defendant.*

Among the matters of law to be argued in support of said demurrer are:

1. The alleged contract upon which this suit is based is void as against public policy.
2. There is no valid consideration upon which said contract can be lawfully based.
3. That said contract cannot be enforced.

COLE & DONALDSON,  
*Attorneys for Defendant.*

CHARLES F. JOY VS. JOSEPH WILSON FROST.

Supreme Court of the District of Columbia.

At Law. No. 48511.

CHARLES F. JOY, Plaintiff,  
*vs.*  
JOSEPH WILSON FROST, Def't.

FRIDAY, May 3d, 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

Upon consideration of the demurrer filed herein to the declaration, it is ordered that said demurrer be, and is hereby overruled.

*Motion to Reargue Demurrer.*

Filed May 16, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48511.

CHARLES F. JOY  
*vs.*  
JOSEPH WILSON FROST.

Comes now the defendant and moves the court for a reargument on the demurrer heretofore filed to the declaration in this cause.

R. GOLDEN DONALDSON,  
*Attorney for Defendant.*

To Messrs. Crosthwaite & Colladay, Attorneys for Plaintiff:

Please take notice that we shall call the foregoing motion to the attention of the Justice, to whom the same may be assigned, on Friday next, the 17th instant, when and as the same may be reached on the motion calendar of that day.

R. GOLDEN DONALDSON,  
*Attorney for Defendant.*

Service accepted this 14<sup>th</sup> day of May 1907.

E. F. COLLADAY,  
By F. B. CROSTHWAITE.

Supreme Court of the District of Columbia.

WEDNESDAY, July 31, 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

\* \* \* \* \*

At Law. No. 48511.

CHARLES F. JOY, Plaintiff,  
*v.*  
JOSEPH WILSON FROST, Deft.

Upon consideration of the motion to reargue the demurrer to the declaration herein, which is granted, and after hearing the arguments thereon, it is ordered that the order entered herein May 3d, 1907, overruling said demurrer be and is hereby vacated, and the demurrer is hereby ordered sustained, with leave to plaintiff to amend his declaration as he may be advised within thirty days hereof.

12

*Amended Declaration.*

Filed August 30, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48511.

CHARLES F. JOY, Plaintiff,  
*v.*  
JOSEPH WILSON FROST, Defendant.

The plaintiff, Charles F. Joy, sues the defendant, Joseph Wilson Frost for one thousand (1000) dollars, which the defendant owes the plaintiff and unjustly detains from him; for that by a certain act of Congress approved March 3, 1903, the sum of twenty-five thousand (25,000) dollars was appropriated to enable the Secretary of the Interior to install an electrical fire alarm apparatus in the buildings of the Government Hospital for the Insane situated in the District of Columbia, and the defendant, who was financially interested in and a part owner of certain patented electrical apparatus and devices suitable for the purposes provided in said act of Congress was desirous of having his said apparatus and devices adopted by the Secretary of the Interior for installation in the said buildings of the said Government Hospital for the Insane, and on, to wit, the 15th day of April, 1903, applied to the plaintiff, who was at that time engaged in the practice of law in the District of Columbia, for his services as such attorney and employed him to urge the Secretary of the Interior to create and appoint a Board of Electrical Experts vested with the

power and charged with the duty to select the particular form  
13 or type of apparatus or device which should be installed in  
said buildings under the provisions of the said act of Congress,  
and to make an order requiring the owners and representatives of  
any and all electrical fire alarm apparatus or devices who might seek  
to have their respective apparatus or devices installed in said build-  
ings under the provisions of said act of Congress, to submit their  
respective apparatus or devices to said "Board of Electrical Experts,"

which board should pass upon the respective merits thereof and select the best and most suitable one for installation in said buildings, and the defendant, on to wit, the said 15th day of April, 1903, contracted and agreed with the plaintiff in consideration of said services to be rendered by the plaintiff to pay to him the sum of one thousand (1000) dollars if the Secretary of the Interior should create and appoint a Board of Electrical experts as aforesaid, and if the said apparatus or devices in which the defendant was interested should be selected by the said Board for installation in said buildings under said act of Congress; that it was specifically understood and agreed between the plaintiff and defendant as a part of the terms of his contract of employment as aforesaid, that the plaintiff's work and services should terminate with the promulgation of the order of the Secretary of the Interior creating or appointing the aforesaid Board of Electrical Experts and requiring the submission of the said apparatus or devices thereto and that he should not in any way represent the defendant or the defendant's associates or the apparatus or devices in which the defendant was interested, before the said Board of Electrical Experts or have anything whatever to do with the

hearings before, deliberations, or decision of the said board, or  
14 the subsequent action of said employment, the plaintiff in his capacity of attorney at law, did present fully to the Secretary of the Interior the matter of the creation and appointment of said Board of Electrical Experts with the powers aforesaid and the making of said order requiring the submission of all said apparatus and devices thereto, and the Secretary of the Interior did, on to wit, the first day of May, 1903, make and promulgate an order creating and appointing said Board of Electrical Experts and requiring the submission of all apparatus and devices to the said Board for the purposes aforesaid, and the apparatus and devices in which the said defendant was interested, together with many other kinds of apparatus and devices, was submitted to said Board, which Board did, on to wit, the first day of June, 1903, select, accept and adopt for installation in said buildings under the said act of Congress the devices and apparatus in which the said defendant was financially interested, but the plaintiff never appeared before the said Board, never made any representations to the said Board or any of the members thereof, and never sought in any manner to influence the action of the Secretary of the Interior; and thereafter, on to wit, the 15th day of June, 1903, the Secretary of the Interior promulgated an order for the installation of the said apparatus or devices in which the said defendant was interested and part owner, in the said buildings for a consideration in the sum of twenty five thousand (25000) dollars to be paid for the said installation and for the apparatus installed; and although often requested to do so, the defendant has hitherto refused and  
15 still refuses to pay to the plaintiff the said sum of one thousand dollars, (\$1,000) or any part thereof.

Whereof plaintiff brings this suit and claims one thousand dollars (\$1,000) with interest from the first day of June, 1903, besides costs.

## II.

The plaintiff, Charles F. Joy, sues the defendant, Joseph Wilson Frost for other money payable to the plaintiff by the defendant, for goods sold and delivered by the plaintiff to the defendant; for work done and materials provided and services rendered by the plaintiff for the defendant at his request; and for money loaned by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at his request and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them. And the plaintiff claims the sum of one thousand dollars (\$1000) with interest from the first day of June, 1903, besides costs.

E. F. COLLADAY,  
HARRY F. LERCH,  
*Attorneys for Plaintiff.*

16

*Notice to Plead.*

The defendant is to plead hereto on or before the 20th day exclusive of Sundays and legal holidays occurring after the date of service hereof, otherwise judgment.

E. F. COLLADAY,  
HARRY F. LERCH,  
*Attorneys for Plaintiff.*

Service of copy acknowledged the 30th August, 1907.

R. GOLDEN DONALDSON,  
*Att'y for Defendant.*

17

*Demurrer to Amended Declaration.*

Filed October 18, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48511.

CHARLES F. JOY  
*vs.*  
JOSEPH WILSON FROST.

The defendant says that the amended declaration filed in this case is bad in substance.

COLE & DONALDSON,  
*Attorneys for Defendant.*

Among the matters of law to be argued in support of said demurrer are:

1. The alleged contract upon which this suit is based is void as against public policy.

2. There is no valid consideration upon which said contract can be lawfully based.

3. Said contract cannot be enforced.

COLE & DONALDSON,  
*Attorneys for Defendant.*

Supreme Court of the District of Columbia.

FRIDAY, November 8<sup>th</sup>, 1907.

Session resumed pursuant to adjournment, Hon. Thomas H. Anderson, Justice presiding.

\* \* \* \* \*

At Law. No. 48511.

CHARLES F. JOY, Plaintiff,  
*vs.*  
JOSEPH WILSON FROST, Def't.

Upon consideration of the demurrer filed herein October 18th, 1907, to the amended declaration, it is ordered that said demurrer be and is hereby sustained, with leave to plaintiff to amend; which the plaintiff by his attorney in open Court declines and elects to stand upon the amended declaration herein filed. Thereupon, it is considered and adjudged that the plaintiff herein take nothing by this action, that the defendant go hereof without day, be for nothing held, and recover of plaintiff his costs of defense to be taxed by the Clerk, and have execution thereof. Thereupon, the plaintiff by his attorney in open court, notes an appeal to the Court of Appeals and bond for costs is thereupon fixed in the sum of Fifty Dollars.

*Order for Transcript of Record.*

Filed November 20, 1907.

In the Supreme Court of the District of Columbia, the 20th Day of November, 1907.

At Law. No. 48511.

CHARLES F. JOY  
*vs.*  
JOSEPH WILSON FROST.

The Clerk of said Court will make transcript on appeal as follows:

Declaration & affidavit filed May 3, 1906.  
Demurrer filed June 6, 1906;  
Order overruling demurrer;

Motion for re-hearing on demurrer May 16, '07;  
Order granting re-hearing July 31, '07;  
Order July 31, '07, setting aside order of May 3, '07, & sustaining  
demurrer, granting leave to amend in 30 days;  
Amended declaration Aug. 30, '07;  
Demurrer Oct. 18, '07;  
Order sustaining demurrer & Judgment, etc.

E. F. COLLAWAY,  
*Att'y for Plaintiff.*

*Memorandum.*

November 26, 1907.—Appeal bond filed.

20                   Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 19, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 48511, at law, wherein Charles F. Joy is Plaintiff, and Joseph Wilson Frost is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 9th day of January, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1853. Charles F. Joy, appellant, *vs.* Joseph Wilson Frost. Court of Appeals, District of Columbia. Filed Jan. 11, 1908. Henry W. Hodges, clerk.